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Monday
July 14, 1980

Part VII

Department of the Interior

Bureau of Indian Affairs

Off-Reservation Treaty Fishing, Fraser River Convention Sockeye and Pink Salmon Fishery

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 256

Off-Reservation Treaty Fishing; Fraser River Convention Sockeye and Pink Salmon Fishery

AGENCY: Department of the Interior.

ACTION: Emergency regulations.

SUMMARY: These regulations implement a treaty Indian fishery for sockeye and pink salmon in treaty fishing areas located in waters coming under the United States Convention with Canada for the Protection, Preservation, and Extension of the Sockeye and Pink Salmon Fishery of the Fraser River System. Since pink salmon runs occur in odd years, only sockeye salmon will enter the fishery in 1980. These rules implement domestic law of the United States to provide treaty Indian tribes the full opportunity to harvest one-half of the United States share of sockeye salmon in Convention waters in a manner consistent with the United States' obligations to Canada under the Fraser River Convention. Non-Indian fisheries in these waters are governed by the regulations of the International Pacific Salmon Fisheries Commission. These rules are promulgated by the Department of the Interior to apply only to Indians exercising fishing rights secured to them by treaties of the United States.

EFFECTIVE DATE: 0001 a.m. on July 14, 1980.

FOR FURTHER INFORMATION CONTACT:

Robert D. Ringo, Fishery Management Biologist, Olympia Area Office Fisheries Assistance Office, U.S. Fish and Wildlife Service, 2625 Parkmont Lane, Bldg. A. Olympia, Washington 98502 (206) 753–9460

Dave McCraney, Office of the Secretary, Western Field Office, USDI, 915 Second Avenue, Room 3292, Seattle, Washington 98174 (206) 442–0814

SUPPLEMENTARY INFORMATION: The Department of the Interior is responsible for the supervision and management of Indian Affairs under 43 U.S.C. § 1457, 25 U.S.C. 2 and 9, and the Reorganization Plan No. 3 of 1950 (64 Stat. 1262), including the protection and implementation of off-reservation fishing rights secured by the Treaty of Point Elliott, 12 Stat. 927 (1859); Treaty with the Makah, 12 Stat. 939 (1859); and Treaty of Point No Point, 12 Stat. 933 (1859) as affirmed in *Washington* v. *Fishing Vessel Association*, 443 U.S. 658 (1979). Such treaty Indian fisheries include a sockeye and pink salmon fishery in treaty fishing places in waters coming under the United States Convention with Canada respecting the sockeye and pink salmon fisheries of the Fraser River System.

The International Pacific Salmon Fisheries Commission has forwarded to the Governments of Canada and the United States, for the approval required by the Convention, the regulations applicable in Convention waters during the 1980 fishing season. On May 22, 1980, the United States, acting through the Department of State, approved the regulations except as to treaty Indians fishing in accordance with regulations promulgated by this Department providing for the exercise of fishing rights secured by the United States treaties. The International Pacific Salmon Fisheries Commission assumes control over U.S. Convention waters on June 22, 1980, and the fishing season in Convention waters begins on July 20, 1980. These regulations are necessary to implement the fishing rights of certain Northwest Washington Indian tribes in that fishery and to meet the United States' obligations to Canada under the Fraser River Convention. For these reasons the Secretary of the Interior hereby and for good cause finds that the formal advance notice, public comment procedures, and delayed effectiveness procedures of 5 U.S.C. 553 are impracticable and contrary to the public interest. These regulations are therefore effective immediately.

The United States has two primary obligations to Canada under the Fraser River Convention. The first such obligation is to assure the proper escapement of sockeye and pink salmon into the Fraser River. The second obligation is to assure the equal division of the catch between Canadian and United States fishermen fishing in the Convention Waters. The United States also has treaty obligations to certain Northwest Indian tribes to assure that such tribes have the full opportunity to harvest one-half of the fish that pass through tribal usual and accustomed fishing areas.

In past years extensive comments have been received from treaty tribes objecting to the failure of the federal agencies to provide for the full implemention of the treaty tribes' right to catch one-half of the American share of Fraser River sockeye and pink salmon. The United States Supreme Court, in its July 2, 1979 decision in *Washington* v. *Fishing Vessel Ass'n*, affirmed the right of U.S. treaty Indian tribes to one-half of the American share of any run passing through their usual and accustomed fishing places, including United States Convention Waters. Only sockeye salmon enter the Fraser River Convention fishery in 1980, and regulation of the treaty Indian fishery will be consistent with fulfilling the United States' obligation to provide the treaty tribes full opportunity to catch one-half of the American share and to comply with the United States' obligations to Canada under the Convention.

In 1979 comments were received from non-Indian fishermen recommending adjustments to treaty Indian gill net regulations on days when the non-treaty Purse Seine fleet was scheduled to fish. These comments specifically recommended that treaty Indian gill net vessels not be allowed to daytime fish on such days in order to reduce congestion on the waters and to eliminate the conflict between different gear types. In response to this request the treaty Indian tribes and the Department of the Interior adjusted treaty Indian gill net regulations during the 1979 season to eliminate daytime gill net fishing on those dates when the non-treaty Purse Seine fleet was scheduled to fish. These 1980 treaty Indian fishing regulations have been drafted to reflect the same adjustment.

The United States action and these regulations implement the regulatory system which the United States has used since 1977 to meet its obligations both to Canada and to U.S. treaty Indians. The Supreme Court approved this regulatory system is *Washington* v. *Fishing Vessel Ass'n*, 443 U.S. 658 (1979). This year, as in previous years, the affected treaty tribes will regulate their fisheries concurrently and in a manner consistent with the regulations of the Department.

An environmental assessment has been completed and it has been concluded that the implementation of a treaty Indian fishery by these regulations is not a major federal action which would significantly affect the environment within the meaning of Section 102(2)(c) of the National Environmental Policy Act of 1969.

The Department of the Interior has also determined that this document is not a significant rule and does not require regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

The primary author of this document is Robert D. Ringo, Fishery Management Biologist, Fisheries Assistance Office, U.S. Fish and Wildlife Service, 2625 Parkmont Lane, Olympia, Washington 98502 (206/753–9460).

Comments are invited at the address indicated above and will be considered

in respect to amendments to this subpart.

Dated: July 10, 1980.

Cecil D. Andrus,

Secretary.

25 CFR Part 256, Subpart B is revised to read as follows:

Subpart B—Fraser River Convention Sockeye and Pink Salmon Fishery

Sec.
256.11 Purpose of this subpart: compliance.
256.12 Definition of terms.
256.13 Other laws and regulations
256.14 Identification.
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Authority: The provisions of subpart B are issued under the authority of 25 U.S.C. §§ 2, 9; 5 U.S.C. § 301; 43 U.S.C. § 1451 *et. seq.*; 25 CFR 256.

§ 256.11 Purpose of this subpart: compliance.

(a) This subpart governs fishing for sockeye and pink salmon by any treaty Indian who is fishing at his tribe's treaty fishing places in U.S. Convention waters during the time the Commission exercises control over the Fraser River Convention sockeye and pink salmon fishery.

(b) Any treaty Indian shall comply with this subpart when fishing for sockeye and pink salmon at his tribe's treaty fishing places in U.S. Convention waters during the time the Commission exercises control over the Fraser River Convention sockeye and pink salmon fishery. Fishing by any person which is not in accordance with these regulations is governed by 50 CFR Part 371 and violations thereof are subject to the penalties of the Act.

§ 256.12 Definition of terms.

(a) Act means: the Sockeye Salmon or Pink Salmon Fishing Act of 1947, 16 U.S.C. 776–776f.

(b) Authorized assistant means: any Indian person described in Section 256.15 and thereby authorized to assist the treaty Indian.

(c) Commission means: the International Pacific Salmon Fisheries Commission provided for by Article II of the Convention.

(d) Convention means: the convention between the United States and Canada for the Protection, Preservation, and Extension of the Sockeye and Pink Salmon Fisheries of the Fraser River System, signed at Washington on the 26th day of May 1930, as amended by the protocol to include pink salmon, signed at Ottawa on the 28th day of December 1956.

(e) Convention waters mean: those waters described in Article I of the Convention.

(f) Enforcement Officer means:

(1) any enforcement agent of the National Marine Fisheries Services;

(2) any commissioned, warrant, or petty officer of the Coast Guard;

(3) any Coast Guard personnel accompanying and acting under direction of any persons described in (2) of this paragraph (f);

(4) any tribal enforcement officer authorized to enforce treaty tribal regulations described under section 256.19 of this subpart.

(5) any state enforcement officer authorized to enforce the Commission's regulations, 50 CFR Part 371, or consistent state regulations implementing the Commission's regulations.

(6) any other person authorized by the Regional Director, Northwest Region, National Marine Fisheries Service to enforce the provisions of the Convention, the Commission's regulations, the Act, or 50 CFR Part 371.

(7) Any other person authorized by the Secretary of the Interior to enforce the provisions of 25 CFR 256 Subpart A or B.

(g) Fish, fishing means: the fishing for, catching, or taking, or the attempted fishing for, catching, or taking, of any sockeye or pink salmon in Convention waters.

(h) Fishing gear means; any net, trap, hook, or other device, appurtenance or equipment, of whatever kind or description, used or capable of being used for the capturing of sockeye or pink salmon.

(i) Lawful gear means; any gill net, purse seine, reef net, troll line, beach seine, or stake net, as defined under tribal law or in Washington Administrative Code Chapter 220–16 and 220–47–301 through 304.

(j) Person includes: individuals, partnerships, associations and corporations.

(k) Pink salmon means: that species of salmon known by the scientific name *Oncorhynchus gorbuscha.*

(l) Sockeye salmon means; that species of salmon known by the scientific name *Oncorhynchus nerka.*

(m) State areas means: fishing areas defined as Puget Sound Salmon Management and Catch Reporting Areas in Washington Administrative Code Chapter 220–22.

(n) Stretch measure means: the distance between the inside of one knot to the outside of the opposite (vertical) knot in one mesh. Measurement shall be taken when the mesh is stretched vertically while wet, by using a tension of ten (10) pounds on any three (3) consecutive meshes, then measuring the middle mesh of the three while under tension.

(o) Treaty Indian means: any member of a treaty Indian tribe which has treaty fishing places in U.S. Convention waters.

(p) Treaty Indian identification means: identification issued by the Bureau of Indian Affairs or a treaty Indian tribe identifying the holder as a member of the issuing tribe. The identification card shall include the name and address of the tribal member, the member's enrollment number (if any), date of birth, and the member's photograph.

(q) Treaty Indian tribe mean any tribe which has been found by the United States District Court for the Western District of Washington to be entitled to exercise treaty-secured fishing rights in U.S. Convention waters. Currently these tribes are the Makah Tribe, Lower Elwha Band Clallam Tribe, Port Gamble Band Clallam Tribe, Suquamish Tribe, Lummi Tribe Nooksack Tribe, the Swinomish Indian Tribal Community, and Tulalip Tribe.

(r) Treaty fishing places (of an Indian tribe) means: any location which shall have been previously determined by the United States District Court for the Western District of Washington in *U.S.* v. *Washington* to be a place at which that treaty tribe may take fish under rights secured by a treaty of the United States with such tribe or its predecessor in interest.

(s) Washington Administrative Code means: only those chapters and sections of the Washington Administrative Code that were in effect as of June 22, 1980.

(t) Vessel means: every type or description of water craft or other contrivance used, or capable of being used, as means of transporation in water.

§ 256.13 Other laws and regulations.

Nothing in this subpart shall be construed to relieve a treaty Indian or his authorized assistant from any applicable requirement lawfully imposed by a tribe, the United States, or the State of Washington. Nor shall anything herein authorize any treaty Indian or his authorized assistant to act contrary to any restriction or requirement of applicable tribal laws.

§ 256.14 Identification.

(a) Any treaty Indian fishing under the authority of this subpart shall have in his possession at all such times treaty

Indian identification required by 25 CFR 256.3 and by applicable tribal law.

(b) Any person assisting a treaty Indian under the authority of § 256.15 of this subpart shall have in his possession at all such times an identification card issued by the Bureau of Indian Affairs or by a treaty Indan tribe, identifying the holder as an Indian qualified to assist a treaty Indian. The identification card shall include the name of the issuing tribe, the name, address, tribal affiliation, date of birth, and photograph of the assistant, and the name and enrollment number (if any) of the treaty Indian the assistant is qualified to assist.

(c) Identification described in paragraphs (a) or (b) shall be shown on demand to an enforcement officer by the treaty Indian or authorized assistant.

(d) Any treaty Indian fishing under this subpart shall comply with the treaty Indian vessel and gear identification requirements of Decision No. 1 and subsequent Orders of the U.S. District Court for the Western District of Washington in *U.S. v. Washington*, as implemented in Washington Administrative Code 220-47-121.

§ 256.15 Fishing assistance.

Notwithstanding 25 C.F.R. 256.5, any treaty Indian fishing under this subpart may be assisted, if authorized by the treaty Indian's tribe, by the treaty Indian's spouse (if Indian), forebears (if Indian), children, grandchildren and siblings authorized by the United States District Court for the Western District of Washington in *U.S. v. Washington*. Persons so authorized shall be considered treaty Indians for the purposes of this subpart.

§ 256.16 Reporting requirements.

(a) Any person receiving or purchasing fish caught by any treaty Indian fishing under this subpart shall comply with Decision No. 1 and subsequent Orders of the U.S. District Court for the Western District of Washington in *U.S. v. Washington* as implemented by the treaty tribes and in Washington Administrative Code Chapter 220-69.

(b) Any treaty Indian who sells fish caught under the authority of this subpart directly to a consumer, restaurant, boathouse, or any other retail outlet shall comply with Washington Administrative Code Chapter 220-69.

(c) No person receiving or purchasing sockeye and pink salmon caught in U.S. Convention waters during the time the Commission exercises control over fishing for sockeye and pink salmon shall fail to permit enforcement officers to inspect records or reports required by WAC 220-69 or to inspect fish landing, holding or storage areas under the control of this person.

§ 256.17 Fishing seasons.

(a) No treaty Indian shall fish for sockeye salmon with nets in U.S. Convention waters (State Areas 4B, 5, 6C, 6, 6A, 7, 7A, 7B and 7D) from June 22, 1980 to July 19, 1980, both dates inclusive.

(b) No treaty Indian shall fish for sockeye salmon in U.S. Convention waters in State Areas 4B and 5 except with lawful gear from:

(1) July 19, 1980 to July 25, 1980, both dates inclusive from 5:00 a.m. on Sunday to 9:30 a.m. on Friday.

(2) July 26, 1980 to August 8, 1980, both dates inclusive from 5:00 a.m. on Saturday to 9:30 a.m. on Friday of each week.

(3) August 9, 1980 to August 15, both dates inclusive from 5 a.m. on Saturday to 9:30 a.m. on Thursday.

(4) August 16, 1980 to August 29, 1980, both dates inclusive from 5:00 a.m. on Saturday to 9:00 a.m. on Thursday of each week.

(c) No treaty Indian shall fish for sockeye salmon in State Areas 6C, 6, 6A, 7, 7A and 7D with purse seines and reef nets except from:

(1) July 19, 1980 to July 25, 1980, both dates inclusive from 5:00 a.m. to 9:30 p.m. each day, on Sunday through Wednesday.

(2) July 26, 1980 to August 15, 1980, both dates inclusive from 5:00 a.m. to 9:30 p.m. each day, on Saturday through Tuesday of each week.

(3) August 16, 1980 to September 5, 1980, both dates inclusive from 5:00 a.m. to 9:00 p.m., each day, on Saturday through Tuesday of each week.

(4) September 6, 1980 to September 12, 1980, both dates inclusive from 5:00 a.m. to 9:30 p.m. each day, on Saturday through Monday.

(d) No treaty Indian shall fish for sockeye salmon in U.S. Convention waters in State Areas 6C, 6, 6A, 7, 7A and 7D with gill nets except from:

(1) July 19, 1980 to July 25, 1980, both dates inclusive from 5:00 a.m. on Sunday to 9:30 a.m. on Monday and from 7:00 p.m. on Monday to 9:30 a.m. on Thursday.

(2) July 26, 1980 to August 15, 1980, both dates inclusive from 5:00 a.m. on Saturday to 9:30 a.m. on Monday of each week, and from 7:00 p.m. on Monday to 9:30 a.m. on Wednesday of each week.

(3) August 16, 1980 to September 5, 1980, both dates inclusive from 5:00 a.m. on Saturday to 9:00 a.m. on Monday of each week, and from 6:00 p.m. on Monday to 9:00 a.m. on Wednesday of each week.

(4) September 6, 1980 to September 12, 1980, both dates inclusive from 5:00 a.m. on Saturday to 9:00 a.m. on Monday and from 6:00 p.m. on Monday to 9:00 a.m. on Tuesday.

(e) Notwithstanding the foregoing provisions, no treaty Indian shall fish for sockeye or pink salmon in U.S. Convention waters lying westerly and northerly of a straight line drawn from Iwerson's Dock on Point Roberts to Georgina Point Light at Active Pass, from August 31, 1980 to September 6, 1980, and from September 14, 1980 to September 20, 1980, all dates inclusive.

(f) Notwithstanding the foregoing provisions, no treaty Indian shall fish for sockeye or pink salmon in U.S. Convention waters lying westerly and northerly of a straight line drawn from the low water range marker in Boundary Bay on the International Boundary across the east tip of Point Roberts to the East Point Light on Saturna Island from September 7, 1980 to September 13, 1980, both dates inclusive.

(g) The foregoing regulations do not apply to the following United States Convention waters:

(1) Commencing July 20, the waters of Puget Sound State Area 7B.

(2) Puget Sound State Areas 6B and 7C.

(3) Preserves previously established by the Director of Fisheries of the State of Washington for the protection and preservation of other species of food fish.

§ 256.18 Emergency orders.

(a) These regulations are subject to frequent change by emergency order, particularly with respect to permissible fishing times. Notice of the basis of the emergency and anticipated change will be transmitted immediately to the Northwest Indian Fisheries Commission for the treaty tribes, in order that the treaty tribes may amend tribal fishing regulations in response to the emergency.

(b) Notice of a change in these regulations and tribal regulations referred to in § 256.19 will be provide through the Northwest Indian Fisheries Commission and is available by calling the Northwest Indian Fisheries Hot-Line (1-800-562-6142). Emergency orders will be published in the **Federal Register** as quickly as possible.

(c) Emergency orders are effective at the time notice is provided to the Northwest Indian Fisheries Commission or as otherwise stated in the order, whichever time is later.

§ 256.19 Treaty tribe fishing regulations.

To the extent that they are consistent with this subpart, treaty tribe fishing regulations governing treaty Indian sockeye and pink salmon fishing in U.S. Convention waters during the time the Commission exercises control, which are approved under 25 CFR 256.2(b), and emergency orders under such treaty tribe fishing regulations, are incorporated herein and are effective for all purposes as part of this subpart.

§ 256.20 Unlawful possession.

No treaty Indian shall possess sockeye or pink salmon on board a fishing vessel which is engaged in a fishery for other species in U.S. Convention waters during the times Convention waters are closed to sockeye and pink salmon fishing by the regulations in this subpart.

§ 256.21 Forcible assault on enforcement officer.

No person fishing under this subpart shall assault, resist, oppose, impede, intimidate, or interfere with an enforcement officer engaged in enforcing this subpart.

Dated: July 10, 1980.

Cecil D. Andrus,

Secretary of the Interior.

[FR Doc. 80-21119 Filed 7-11-80; 10:40 am]

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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday).

This is a voluntary program. (See OFR NOTICE 41 FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/SECRETARY	USDA/ASCS		DOT/SECRETARY	USDA/ASCS
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DOT/FAA	USDA/FNS		DOT/FAA	USDA/FNS
DOT/FHWA	USDA/FSQS		DOT/FHWA	USDA/FSQS
DOT/FRA	USDA/REA		DOT/FRA	USDA/REA
DOT/NHTSA	MSPB/OPM		DOT/NHTSA	MSPB/OPM
DOT/RSPA	LABOR		DOT/RSPA	LABOR
DOT/SLSDC	HHS/FDA		DOT/SLSDC	HHS/FDA
DOT/UMTA			DOT/UMTA	
CSA			CSA	

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.

Comments on this program are still invited. Comments should be submitted to the Day-of-the-Week Program Coordinator. Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408

REMINDERS

The "reminders" below identify documents that appeared in issues of the **Federal Register** 15 days or more ago. Inclusion or exclusion from this list has no legal significance.

Rules Going Into Effect Today

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service—

40099 6-13-80 / Amended potency tests; Leptospira and Clostridium Bacterin; standard requirements

COMMUNITY SERVICES ADMINISTRATION

39849 6-12-80 / Funding of CSA grantees

ENVIRONMENTAL PROTECTION AGENCY

40030 6-12-80 / Revised motor vehicle exhaust emission standards for carbon monoxide (CO) for 1981 Model Year light-duty vehicles

FEDERAL COMMUNICATIONS COMMISSION

40116 6-13-80 / Amateur radio service; deleting restriction which limits allowable bandwidth of frequency modulated (FM) voice emissions in 50-54 MHz band

41635 6-20-80 / Permitting public coast stations on Great Lakes to transmit scheduled weather broadcasts on Channel 17 utilizing both F3 and F4 emissions

40117 6-13-80 / Simplification of the licensing and call sign assignment systems for stations in the amateur radio service

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration—

40110 6-13-80 / Certification of antibiotics and insulin; financial responsibility of agents

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Government National Mortgage Association—

40556 6-13-80 / Guaranty of mortgage-backed securities; issuers' securities marketing and trading activities

Interstate Land Sales Registration Office—

40474 6-13-80 / Land registration, purchaser's revocation rights, sales practices and standards, and formal procedures and rules of practice

INTERSTATE COMMERCE COMMISSION

39853 6-12-80 / Exempt zones—Specified Major Air Cargo Centers

SECURITIES AND EXCHANGE COMMISSION

39838 6-12-80 / Reports by national securities exchanges and registered national securities associations

List of Public Laws

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last Listing July 11, 1980

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